IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

CRL.A.No. 289 of 2002()

SC.392/2001 of IIIRD ADDL. SESSIONS COURT (ADHOC), THRISSUR
.....

APPELLANT: ACCUSED

RAMAKRISHNAN, S/O. KITTA,
ALUMPARAMBIL HOUSE, PAZHUVIL, THRISSUR.

BY ADV. SRI.C.HARIKUMAR

RESPONDENTS: COMPLAINANT

STATE, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Crl.A.No.289 of 2002(A)

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Dated this the 30th day of July, 2007

J U D G M E N T

The appellant stands convicted for the offence under Section 55(a) and 55(i) of the Abkari Act, and sentenced to undergo simple imprisonment for one year and to pay a fine of rupees one lakh and in default to undergo simple imprisonment for one year for the offence under Section 55(a) of the Abkari Act and, to undergo simple imprisonment for one year and to pay a fine of rupees one lakh and in default to undergo simple imprisonment for a period of one year for the offence under Section 55(i) of the Abkari Act.

2. The prosecution case is that on 04/12/1998, at 6.30 p.m., in the road in front of Alumparambil Bhagavathy Temple at Kurumbilavu, the accused was found in possession of 4.5 litres of toddy in a plastic container having the capacity of 10 litres.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 5 and Exts.P1 to P6 and MO.1. As to the detection and recovery, PWs.1 and 2, the Excise Inspector and the Excise Guard have testified. PW.5 one of the independent witnesses, although has admitted his signature in Exts.P1 and

P2, arrest memo and seizure mahazar, it is his version that he had signed at the Excise office is only to help the accused, it was found. Hence, it stands established before the court below, on the version of PWs.1 and 2, the official witnesses, that the accused was found in possession of the above quantity of toddy at the time and place mentioned by the prosecution. Of course, it is contended that there is no proper evidence as to the exact quantity of toddy seized but the court below has relied on the version of PW.1, the Excise Inspector in this regard.

I find no reason to interfere in the findings of the court below on the above aspects. Evidently, the accused was found in possession of excess quantity of toddy than that was permissible without authorisation, that is, 2.5 litres. All the same, it is contended by the counsel for the appellant that the offence under Section 63 of the Abkari Act only will be attracted as it has come out in evidence that the accused is a toddy tapper. It is the version of PW.1, the Excise Inspector, that the accused is a toddy tapper. PW.5, the independent witness, has also stated that the accused is a licensed toddy tapper. The appellate court has relied on the decision in **Mohanan vs.State of Kerala [2007 (1) KLT 845]**, wherein the Division Bench of this Court has held

that for possession of the excess quantity, the offence attracted is only under Section 63 of the Abkari Act. I find that the contention of the counsel for the appellant in this regard has to be admitted. Hence, the conviction for the offence under Section 55(a) and 55(i) of the Abkari Act is hereby set aside. The accused/appellant is convicted for the offence under Section 63 of the Abkari Act and sentenced to pay a fine of rupees five thousand and in default to undergo simple imprisonment for three months. The appeal is disposed of as above.

Sd/-

K.R.UDAYABHANU,
Judge

ms

K.R.UDAYABHANU, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Crl.A.No.289 of 2002(A)

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

J U D G M E N T

30th July, 2007